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MICHAEL RODAK, JR.,

IN THE

Supreme Court of the United States

OCTOBER TERM, 1972

No. 72-1054

TYLER JUNIOR COLLEGE, HARRY E. JENKINS, EDWARD M. POTTER and EDWIN E. FOWLER,

Petitioners,

—v.—

JOE RICHARD LANDSDALE, PAUL HARDEN and L. H. HUTCHINSON, JR.,

Respondents.

RESPONDENTS' BRIEF IN OPPOSITION

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Since *Ferrell* v. *Dallas Independent School District,* 392 F.2d 697 (5th Cir.), *cert. denied,* 393 U.S. 856 (1969), the Court has declined to review any of the school haircut cases brought here by petition for certiorari. With the exception of *King* v. *Saddleback Jr. College District,* 445 F.2d 932 (9th Cir.), *cert. denied,* 40 U.S. Law Week 3249 (Nov. 22, 1971), all of those cases involved students at secondary schools.

In several of those secondary school cases, the petitioners were represented by undersigned counsel. See, e.g., *Karr* v. *Schmidt,* No. 72-16, *cert. denied* 41 U.S. Law Week 3254 (Nov. 6, 1972); *Freeman* v. *Flake,* No. 71-956, *cert. denied,* 40 U.S. Law Week 3468 (March 27, 1972). We

thought then, and now, that certiorari should have been granted in those cases, not merely because of the stark split in the circuits, see *Freeman* v. *Flake, supra* at 3469, but also because the question whether compelled standards of dress and appearance in secondary schools involved, in our opinion, substantial constitutional issues concerning the right of privacy and freedom of expression of minors.

The case at bar, however, involves college students who are adults, and for that reason the decision below is correct and certiorari should be denied. Whatever the Court may think of the constitutional significance of rules which regulate the appearance of secondary school students, recent decisions of the Court are adequate to establish that the constitutional rights of college students on campus are to be recognized and enforced to the same extent as the rights asserted by adults in general off the campus. The Court in *Healey* v. *James,* 408 U.S. 169 (1972), explicitly so held: " . . . The precedents of this Court have no room for the view that, because of the acknowledged need for order, First Amendment protections should apply with less force on college campuses than in the community at large. Quite to the contrary, '[t]he vigilant protection of constitutional freedoms is nowhere more vital than in the community of American schools.'" That constitutional perspective was re-asserted only a few weeks ago in *Papish* v. *University of Missouri,* 41 U.S. Law Week 3496 (March 19, 1973): " . . . the First Amendment leaves no room for the operation of a dual standard in the academic community with respect to the content of speech . . . "

Since it would be thought fatuous should anyone argue that the length of the hair of adults in the general population could be regulated by the criminal law, it must be con-

cluded that the regulation at issue in this case was properly declared unconstitutional.*

CONCLUSION

Certiorari should be denied.

Respectfully submitted,

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* Needless to say, it should be thought equally baseless if the general criminal law sought to regulate the length of the hair of minors. Thus, we have thought that the imposition of such a rule upon secondary school students, enforceable by disciplinary penalties, is constitutionally capricious. But it is unnecessary for present purposes to achieve perfect symmetry between the rights of minors and adults.